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POST-CONFIRMATION TRUST

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;) CIVIL NO. CV03-00385 SOM-LEK
Plaintiff,) (Copyright)
vs.)
HAWAIIAN EXPRESS SERVICE,) **DECLARATION OF DAMIAN D.**
INC., et al.,) **CAPOZZOLA IN SUPPORT OF**
Defendants.) **PCT'S MOTION IN LIMINE TO**
) **EXCLUDE THOMAS UENO**
)
) Judge: Hon. Susan O. Mollway
) Trial Date: February 28, 2006
)
) Hearing Date: February 24, 2006
) Hearing Time: 2:00 p.m.

I, DAMIAN D. CAPOZZOLA, declare that:

1. I am an attorney at the law firm of KIRKLAND & ELLIS, LLP, attorneys for Defendant PCT and am duly authorized to make this affidavit.
2. I am licensed to practice law in the State of California and have been admitted pro hac vice in this case. I know the following to be true through my work in this case, and if requested could and would competently testify as such.
3. Exhibit A contains a true and correct copy of the March 21, 2005 report of Thomas Ueno.
4. Exhibit B contains a true and correct copy of excerpts from this Court's October 21, 2005 Order on summary judgment.
5. Exhibit C contains a true and correct copy of the December 27, 2005 supplemental report of Thomas Ueno, without exhibits.
6. Exhibit D contains a true and correct copy of September, 2005 correspondence between counsel concerning production of the Guidance images to Berry's counsel.
7. Exhibit E contains a true and correct copy of Plaintiff's Trial Ex. 63 referencing the Logistics Data Org.xls spreadsheet produced to Wayne Berry in September, 2005.
8. Exhibit F contains a true and correct copy of the PCT's Motion In Limine To Exclude Thomas Ueno filed on January 3, 2006.

9. Exhibit G contains a true and correct copy of excerpts from the January 20, 2006 Court transcript.

10. Exhibit H contains a true and correct copy of excerpts from testimony of Thomas Ueno dated January 23, 2006.

11. Exhibit I contains a true and correct copy of correspondence from April and July, 2005, demonstrating that the PCT twice sent Ueno.

12. Exhibit J contains a true and correct copy of the Second Supplemental Expert Report of Jeffrey H. Kinrich, served on February 17, 2006.

So sworn under penalty of perjury under the laws of the United States of America in Honolulu, Hawaii, on February 17, 2006.



Damian D. Capozzola